

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 CLARK COUNTY NATURAL RESOURCES
4 COUNCIL and FUTUREWISE,

5 Petitioners,

6 v.
7

8 CLARK COUNTY,

9 Respondent,
10

11 and,
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13 JOHN AND GEORGIANA WARTA, GREEN
14 ARBOR DEVELOPMENT, INC., MATTHEW and
15 DENISE HOUGHTON, RICHARD W. SCHWARZ,
16 WALTER O. SCHWARZ, JONATHAN and
VICTORIA SCHWARZ,

17 Intervenors.
18

Case No. 09-02-0002

**ORDER DENYING MOTIONS TO
DISMISS**

19 This matter is before the Board on Motions filed by Richard W. Schwarz, Walter O. Schwarz
20 and Jonathan and Victoria Schwarz (the "Schwarz Family") and Clark County, both of which
21 argue that the Petition for Review of Futurewise as it pertains to the Schwarz Family
22 properties should be dismissed as it was not timely filed.¹ The Board previously dismissed
23 that portion of Clark County Natural Resources Council's (CCNRC) Petition pertaining to the
24 Schwarz Family properties.²
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27 The relevant portion of the Petition for Review, which seeks review of Ordinance 2008-12-
28 15 (the "2008 Ordinance"), is included in the Petitioners' Issue 2 and reads as follows:

29 Does Clark County's de-designation of agricultural land in application . .
30 .CPZ2008-00005(Schwarz) violate RCW 36.70A.020 (1-2, 5, 8-10, 12),
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¹ Schwarz Family's Motion to Dismiss Untimely Petition, and Clark County's Motion to Dismiss.

² Order Granting Motion to Dismiss dated March 18, 2009.

1 36.70A.050, 36.70A.170, and 36.70A.177? (Ordinance 2008-12-15 Sec. 3
2 (1)).³

3 The bases for both the County and Schwarz Family motions is that the redesignation of the
4 Schwarz Family properties occurred in 1998 with Clark County's adoption of Ordinance No.
5 1998-07-19 (the "1998 Ordinance"). The moving parties argue notice of adoption of the
6 1998 Ordinance was published on August 3, 1998 and any challenge should have been
7 filed within 60 days of that publication.
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10 In support of that assertion the County has submitted Exhibit 1, a transcript of the Clark
11 County Board of County Commissioners (BOCC) July 2, 1998 discussion and vote, which
12 indicates a majority of the BOCC approved the designation of the Schwarz properties as
13 Rural -5 (R-5).⁴
14

15 The moving parties acknowledge neither the original nor legible copies of the
16 Comprehensive Plan maps attached to the 1998 Ordinance can be located. It is thus
17 impossible to determine how the maps designated the Schwarz Family properties. Clark
18 County acknowledges that the subsequently printed County Comprehensive Plan and
19 zoning maps were not amended to reflect the redesignation of the Schwarz Family
20 properties. However, Clark County and the Schwarz Family argue that the 2008 Ordinance
21 merely corrected the 1998 mapping error regarding these properties to reflect the decision
22 made in 1998.
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25 Futurewise asserts that there is no question that the 2008 Ordinance amended the County's
26 Comprehensive Plan in regards the Schwarz properties. They argue that the 2008
27 Ordinance states that it was adopted to "meet the goals and requirements of Chapter
28 36.70A RCW." It is their position that even if the reconsideration of the designation of the
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³ Petition for Review at Sec. III, para. 2.

⁴ Exhibit 1 to both the Schwarz Family's and Clark County's Motions to Dismiss.

1 Schwarz properties was undertaken to correct a previous error, the fact of reconsideration
2 alone is sufficient basis for challenge.⁵

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4 An additional basis asserted by Futurewise is that the County adopted a 20 year
5 Comprehensive Plan update in 2007, subsequent to the 1998 ordinance. That fact led to a
6 GMA compliant Comprehensive Plan as it is presumed valid if not challenged. The 2007
7 update did not reflect the redesignation decision made by the BOCC in 1998 but rather left
8 the Schwarz properties designated as agricultural.
9

10 The Board finds Futurewise 's arguments persuasive. The 1998 Ordinance apparently
11 failed to reflect the BOCC vote to redesignate the Schwarz Family properties and the
12 County failed to amend its Comprehensive Plan and zoning maps after passage of the 1998
13 Ordinance. Furthermore, the County adopted a 20 year Comprehensive Plan update in
14 2007 and did not incorporate the 1998 decision. Finally, and of greatest significance, the
15 County undertook review and reconsideration of the Schwarz Family properties in 2008. The
16 2008 Ordinance at Section 3, Paragraph 1 states, in part, that:
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18 "The Clark County Comprehensive Growth Management Plan Map Designation
19 and corresponding Zoning Map (for the Schwarz properties) is(sic) amended
20 from Resource Lands Agriculture (AG-20) to Rural Residential (R-5) . . ."
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22 That 2008 review and legislative decision clearly resulted in redesignation of the Schwarz
23 Family properties, was required to comply with the GMA, and challenges based on a failure
24 to designate in a GMA compliant manner are now appropriate.
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⁵ Response to Substantive Motions at pg. 14.
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1 The Board concludes that the Motions to Dismiss must be denied.

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3 Dated this 23rd day of April, 2009.

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6 William P. Roehl, Board Member

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9 James McNamara, Board Member

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12 Nina Carter, Board Member